

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Not Restricted

S CR 2018 0213

THE DIRECTOR OF PUBLIC PROSECUTIONS

v

BORCE RISTEVSKI

JUDGE: Beale J
WHERE HELD: Melbourne
DATE OF HEARING: 27 March 2019
DATE OF SENTENCE: 18 April 2019
CASE MAY BE CITED AS: DPP v Ristevski
MEDIUM NEUTRAL CITATION: [2019] VSC 253

CRIMINAL LAW - Sentence - Manslaughter by unlawful and dangerous act - Plea of guilty - Offender killed wife of 27 years in the marital home - Post offence conduct included disposal of body which was not found for eight months - Cause of death unable to be determined due to decomposition of body - How or why offender killed wife unknown - Offender has no criminal antecedents - Good prospects of rehabilitation - Total effective sentence of nine years' imprisonment - Non-parole period of six years.

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the Crown	Mr B Kissane QC with Mr M Fisher	Office of Public Prosecutions
For the Accused	Mr D Hallowes SC with Mr S Norton	Stary, Norton, Halphen

HIS HONOUR:

Circumstances of offending

- 1 Borce Ristevski, on the morning of 29 June 2016, you and your wife Karen Anne Ristevski, to whom you had been married for some 27 years, were at home at 23 Oakley Drive, Avondale Heights. Your 21-year-old daughter Sarah, who also lived there, spoke to both of you before she headed off to work. Sarah was never to see her mother alive again. Within a couple of hours of Sarah's departure, you had killed your wife, disposed of her body in a forest in the Macedon Regional Park and started down a road of deceit that you were to continue on for nearly three years.
- 2 Although, by your plea of guilty to manslaughter, you have finally accepted responsibility for killing Karen, you have not revealed how or why you killed your wife. You may have turned off the road of deceit but you have not taken the high road of full and frank disclosure consistent with true remorse. This explains in large part why the discount for your plea of guilty will be less than you might otherwise expect.
- 3 You accepted the accuracy of the lengthy prosecution summary given at your plea hearing. Much of that summary was understandably taken up with your deceitful post offence conduct. The following condensed summary of your offending and post offence conduct comes in part from the concluding section of the prosecution summary.¹
- 4 Based upon CCTV footage, mobile telecommunications data and network communication towers and the varying accounts given by you and a number of witnesses, you killed Karen inside your home sometime between 8.58 and 10.43 on the morning of 29 June 2016.
- 5 Within a very short time of killing Karen, you put her body into the boot of her own car and then drove from the house. You left the house at about 10.43am in search of a location to dispose of Karen and conceal her body. This search ultimately led you to

¹ The first four paragraphs of my condensed summary are based on [95] to [98] of the Prosecution Summary.

isolated bushland in Loch Road, Macedon.

- 6 A short time into the journey, you turned off your mobile telephone to avoid being traced or detected. A little later, Karen's mobile telephone was also deactivated either because it was deliberately switched off, placed into airplane mode or the battery ran out of power.² At some stage, you disposed of Karen's telephone, handbag and wallet. They have never been found.
- 7 Upon arriving at Loch Road in the Macedon Regional Park, you disposed of Karen in an isolated and remote location. You concealed her body between and under logs and sticks and foliage to such an extent that she was not discovered for eight months.³ You then returned to Oakley Drive, only activating your mobile telephone when you reached Keilor Park at 12.51pm. You arrived home at about 1.03pm.
- 8 When your daughter arrived home from work at about 6.30pm, you made out that you and Karen had had an argument that morning and that Karen had left home in a huff and that you had no idea as to her whereabouts.
- 9 In the days, indeed months and years that followed you continued spinning your web of lies – lying not only to your daughter, but to extended family, friends, police and even the public in a media conference organised by the Police Missing Persons Unit.
- 10 When Karen's body was eventually discovered after eight months, and she was finally given a proper funeral and burial, you acted as a pallbearer, playing the part of the innocent, grieving widower.
- 11 The pretence – the rank deceit – only ended a few weeks ago when you pleaded guilty to manslaughter, which carries a maximum penalty of 20 years' imprisonment.

² This sentence is taken from [64] of the Prosecution Summary.

³ Some forest workers located Karen's body.

Post offence conduct

- 12 Your counsel submitted that I must not allow your post offence conduct to overwhelm or dominate the sentencing exercise. I accept that submission but it is still fair to say that your disposal and concealment of Karen's body and the many lies you have told, worst of all to your daughter, constitute a circumstance of significant aggravation, as the cases on post offence conduct recognise.⁴

Victim impact

- 13 Victim impact statements have been provided by:
- (a) Karen's brother, Stephen Williams;
 - (b) Karen's former sister-in-law, Kerry Williams;
 - (c) Karen's nephew, Lachlan Williams;⁵
 - (d) Karen's aunts, Patricia Gray and Marguerite Knight;
 - (e) Karen's uncle, Gregory Knight;⁶ and
 - (f) Karen's cousins, Stephen Richardson, Lisa Gray and Nevada Knight.
- 14 I have given careful consideration to all of those statements. Shortly, I will highlight some points made in those statements, but first, what am I to make of the fact that no victim statement was provided by your daughter, Sarah? It does not mean, of course, that she is not a victim. Indeed, after your wife, she is your principal victim, as Sarah and her mother were very close. Out of love for you, no doubt, Sarah has declined the invitation to make a victim impact statement and has provided you instead with a glowing character reference. I mean no criticism of Sarah. Anyone with a modicum

⁴ Cases involving post offence conduct to which I have had regard are: *R v BA & Stanley* [2019] VSC 90; *R v Boyle* [2009] VSCA 289; (2009) 26 VR 219; *R v Boroviak* [2018] VSC 793; *R v Chang* [2003] VSC 499; *DPP v England* (1999) 2 VR 258; *R v Mochenigo* [2013] VSCA 231; *R v Sun* [2004] VSC 276; *R v Veerman* [2015] VSC 193.

⁵ Lachlan Williams did not wish his victim impact statement to be read out during the plea hearing. Consequently, I have not included any comments from his statement in these reasons.

⁶ Gregory Knight did not wish his victim impact statement to be read out during the plea hearing. Consequently, I have not included any comments from his statement in these reasons.

of compassion must understand that her predicament is an agonising one. Regrettably the sentence I must pass on you will add to her grief.

- 15 Turning to the victim impact statements I have received, let me first record my complete acceptance of the prosecution's submission that they are "eloquent... measured... powerful and moving... with one voice, they speak of the profound impact the killing of Karen has had upon those family members, and will for the rest of their lives."⁷
- 16 Moreover, your protracted post offence conduct has according to Marguerite Knight, "compounded the sheer grief" of Karen's family. In the months after your wife's killing, Patricia Gray said you would often "rave and rant about the police and the media" rather than make any meaningful effort to locate your wife, and that you would make angry calls to them demanding that they stop talking to the police or the media.
- 17 Your disposal and concealment of Karen's body in Macedon resulted in family members not only having to cope with the anguish of her inexplicable disappearance but also with the fact that her remains were significantly decomposed when she was found, 8 months after her disappearance. For example, Marguerite Knight explains that "being advised that Karen was in such a decomposed state haunts my heart", and Kerry Williams explains that "Even to this day, the hardest part to understand is how he left Karen out there, the way he did to the elements."
- 18 Karen's family also had to contend with significant media interest in your wife's disappearance. Lisa Gray recounts how the "ridiculous stories being entertained by some of the media outlets" were never countered by you.
- 19 Your post offence conduct has also been destructive of familial ties. Lisa Gray explains that "family dynamics have changed, relationships have been broken, probably never to be healed." Your daughter Sarah's relationship with Karen's side of the family has also suffered.

⁷ Transcript of Proceedings, *DPP v Ristevski* (S CR 2018 0213, Beale J, Wednesday 27 March 2019), 57.

- 20 A constant source of anger and disbelief referred to in the statements was your active participation in your wife's funeral, including the fact that you not only comforted so many in the family when you secretly knew that you were the cause of their grief, but that you also carried your wife's casket in the knowledge that you killed her. Kerry Williams explains: "the audacity he showed that day was difficult to watch and I will never forget that he had the nerve to do this all while knowing exactly that he was the cause...of all of our pain." Karen's brother, Stephen Williams, who suspected your involvement in the killing around the time of the funeral, states that "it was so difficult to lead my sister's casket out of the church, knowing who was leading on the other side."
- 21 Even now, the possibility of some degree of closure for the family is complicated, if not cruelled, by the fact that they do not know exactly how or why Karen died. As Lisa Gray explains: "if Borce could do anything for Karen and her side of the family, it would be for him to help take away the constant stream of images I experience almost daily, of Karen struggling for her last breath. The not knowing is worse than knowing." Stephen Richardson noted that because "there is no closure of knowing how Karen died I often think of different scenarios of how it happened and how distraught her mind would have been as she had her life taken away from her from the person she loved for so many years. I pray that it was quick but unfortunately I will never know." In her statement, Lisa Gray asks how "does someone find peace and acceptance when we will now spend the rest of our lives wondering... what happened that morning?"
- 22 It is conceded by your counsel, given your failure to make full and frank disclosure, that your plea of guilty is not evidence of remorse. There is an understandable bitterness expressed in some of the victim impact statements about your failure to demonstrate true remorse. For example, Nevada Knight writes that "you've had almost 3 years to come forward and many months in solitude" and that "you only have admitted to doing the act when it suited your case." Karen's brother, Stephen Williams, explains that after you pleaded guilty to manslaughter he expected "to see

some regret or remorse” but instead he observed you staring back at him with “only anger and hatred” in your eyes. Stephen Richardson observes that “to see a hand go up at the very end to justify their actions in the hope of leniency is heart-breaking and will ensure that I won’t ever forgive.”

- 23 Unfortunately, no sentence that I can impose will undo the suffering you have caused, and continue to cause, to those who knew and loved Karen.

Procedural history

- 24 At this point, it is necessary to say something about the procedural history of your case. You were arrested and charged with murder on 13 December 2017 and remanded in custody.
- 25 A contested committal was conducted in July and August 2018. At the conclusion of that committal, you pleaded not guilty to murder.
- 26 You made a written offer to the prosecution to plead guilty to manslaughter on 10 September 2018, which was rejected.⁸ I was told it was rejected because you were not prepared to disclose how or why you killed your wife.
- 27 On 12 March 2019, the day your trial for murder was listed to commence, I heard legal argument about the use that could be made of your post offence conduct. It was the only evidence on which the prosecution relied to prove that when you killed your wife, you intended to kill her or at least cause her really serious injury, as is required for the offence of murder.
- 28 On the morning of 13 March 2019, I ruled that whilst your post offence conduct could be used to prove that you killed your wife unlawfully, it could not be used to prove that you did so with murderous intent.⁹ After my ruling, the prosecution and the defence asked for some time. When the case resumed at 2.15pm that same day, the prosecution did not announce an intention to challenge my ruling on appeal.

⁸ Transcript of Proceedings, *DPP v Ristevski* (S CR 2018 0213, Beale J, Wednesday 27 March 2019), 74.

⁹ *DPP v Ristevski (Ruling No 1)* [2019] VSC 165.

Instead, the prosecution filed over an indictment for manslaughter, to which you pleaded guilty immediately.

- 29 In those circumstances, and particularly having regard to your offer approximately one month after the committal to plead guilty to manslaughter, I accept your counsel's submission that I should not treat your plea as a late plea.

Objective seriousness of the offence

- 30 All manslaughters are serious offences, because each involves the taking of a human life. But the circumstances of such killings vary enormously: some manslaughters are plainly worse examples of the offence than others, though, in every case, bereaved family and friends may feel, as the poet Hopkins says: "No worst, there is none."¹⁰ Because there is a spectrum of seriousness for manslaughter, like any other offence, it has been common for sentencing judges over many years to try and determine, if possible, where the manslaughter in question falls on that spectrum of seriousness.
- 31 That practice of trying to work out whether a particular manslaughter is a low, mid or upper range example of the offence obviously informed the prosecution and defence submissions in this case, and some of the discussion during the plea hearing, even though it is an approach that has been deprecated by our Court of Appeal in more recent times.¹¹
- 32 Despite that legal development, it is appropriate, given the way the plea hearing played out, that I briefly summarise the submissions which were made regarding the objective seriousness of your offence.
- 33 The prosecution submitted that this was an upper range example of the offence of manslaughter, notwithstanding the complete absence of information as to how you killed your wife. The prosecution based its submission on the following

¹⁰ "No worst there is none. Pitched past pitch of grief": Gerard Manley Hopkins.

¹¹ *DPP v Weybury* [2018] VSCA 120 at [33], [34] per Maxwell P and Hargraves JA, and [54] per Priest JA. The Court of Appeal also referred to these paragraphs from *Weybury* with approval in *Lee v The Queen* [2018] VSCA 343 at [31].

considerations: domestic violence is an aggravated form of violence;¹² this is a particularly bad instance of domestic violence because it involved the taking of a life; your victim was your wife of 27 years, the longevity of that relationship magnifying the breach of trust;¹³ you killed her in her home where, as your counsel conceded, “she should have felt safe, secure and protected”;¹⁴ and the rapidity, extent and duration of your post offence conduct was inconsistent with it being “a low end manslaughter.”¹⁵

34 In written submissions, your counsel submitted that, because of a lack of information,¹⁶ I could not place your offence anywhere on the spectrum of seriousness for manslaughter:

“There is no basis for making any finding as to the circumstances of the killing and therefore no basis to assert any particular level of offending within the range of different examples of unlawful and dangerous act manslaughter.”¹⁷

35 In oral submissions, your counsel arguably shifted his position, suggesting yours was a mid-range example of manslaughter.¹⁸ As for the domestic violence aspect, on which the prosecution relied so heavily, your counsel emphasised that, unlike many domestic violence killings, there was no history of domestic violence in your relationship with your wife; on the contrary, the unchallenged character references indicated a history of relative domestic peace. Whatever happened on the morning

¹² Cases of domestic violence to which I have had regard are *R v Eustace* [2019] VSC 189; *R v MFP* [2001] VSCA 96; *R v Mochenigo* [2013] VSCA 231; *Pasinis v R* [2014] VSCA 97; *R v Postolovski* [2016] SASCCA 69; *R v Ramage* [2004] VSC 508; *R v Turner* (2017) VSC 358.

¹³ Transcript of Proceedings, *DPP v Ristevski* (S CR 2018 0213, Beale J, Wednesday 27 March 2019), 82.

¹⁴ *Ibid*, 68.

¹⁵ *Ibid*, 89.

¹⁶ Defence counsel relied on *R v Chang* [2003] VSC 499, especially at [7] and *R v Veerman* (2015) VSC 193, especially at [7]. See also *R v Hunter* (2002) VSC 162 at [3].

¹⁷ Borce Ristevski, “Outline of Plea Submissions”, Submission in *DPP v Ristevski*, S CR 2018 0213, 26 March 2019, 4.

¹⁸ See Transcript of Proceedings, *DPP v Ristevski* (S CR 2018 0213, Beale J, Wednesday 27 March 2019), 73-74 and 81. Defence counsel said it is “not at the higher end of the range of offending for manslaughter.” He also said the post office conduct does not “elevate it from what otherwise couldn’t be said to be at the high end of the mid-range or even that, [does not] elevate it from somewhere in that mix to the higher end of offending for manslaughter.” Certainly, the prosecutor took your counsel’s oral submissions to amount to a submission that this was at most a mid-range example of manslaughter. The prosecutor said “We take issue, Your Honour, with the submission that somehow or other Your Honour puts all of these matters into the mix and come up with a conclusion that this is mid-range offending.”

of 29 June 2016, your counsel submitted it must be viewed as an isolated instance of domestic violence.¹⁹ The fact that Karen had been your wife for some 27 years was said by your counsel to be “irrelevant”: he submitted that the “length of time that someone is married to a person doesn't make it one of the worst examples of domestic violence,” a submission with which I agree although, in my view, the longevity of a marriage can magnify the breach of trust.²⁰

36 Ultimately, the view that I have arrived at is that I have insufficient information to say whether your offence is a mid or upper range example of manslaughter, although it is clearly not a low range example of manslaughter because of the aggravating domestic violence aspect. Without knowing the level and duration of the violence perpetrated by you which caused your wife's death, I simply cannot say whether your offending was mid or upper range. I do not regard your silence as to how you killed your wife as providing a sufficiently firm basis for drawing the inference that yours must have been an upper range example of the offence of manslaughter. Whilst the community and the courts rightly abhor domestic violence, it is simplistic to suppose that all domestic violence manslaughter cases necessarily fall into the upper range on the spectrum of seriousness for manslaughter. It takes little imagination to think of circumstances where a domestic violence manslaughter – for example, one involving a momentary loss of control and a comparatively low level of violence – could not reasonably be viewed as an upper range example of the offence of manslaughter.

37 There are, however, several things I do know about your offence, as distinct from your post offence conduct, which, as I have already indicated, elevate the objective gravity of your offence above the low range:

- (a) first, this is a serious case of domestic violence – notwithstanding its isolated character – because it resulted in your wife's death;
- (b) second, Karen was not only your wife – she was, as the prosecutor described

¹⁹ Transcript of Proceedings, *DPP v Ristevski* (S CR 2018 0213, Beale J, Wednesday 27 March 2019), 66.
²⁰ *Ibid*, 67.

her and you accepted, the “devoted mother” of your daughter Sarah, with whom she was very close;²¹

- (c) third, Karen was killed by you by an unlawful and dangerous act in her own home, a place which should have been a sanctuary for her; and
- (d) fourth, your wife was 47 years of age and, in the ordinary course of events, should have lived for many more years.

Personal history

- 38 I now turn from the circumstances of your offending to your personal circumstances and history.
- 39 You were born on 14 March 1964 in Macedonia and are currently 55 years old.
- 40 You moved to Australia with your parents and your older brother when you were six years old, and grew up in Footscray.
- 41 You completed Year 11 at Footscray Technical College. After school you commenced work for three years as an instrument technician at Smorgon’s Paper Mill.
- 42 Prior to meeting Karen Ristevski, you had a relationship with Kerry Rickard. In 1984, Kerry Rickard gave birth to your son, Anthony Rickard. You never lived with Kerry Rickard, but continued to reside with your parents in Maidstone. Your relationship with Kerry Rickard ended approximately eight months after your son’s birth. At around this time, you and your brother bought a garment pressing business in Collingwood.
- 43 In 1986, you met Karen. In 1988, you bought a house together at 2 Davitt Drive, Deer Park. At around this time, you and your brother again went into business together, starting a denim clothing manufacturing business. Shortly afterwards, you closed your garment pressing business.

²¹ Ibid, 4.

- 44 You married Karen on 15 January 1989, and in June 1994, purchased a vacant block of land together at 23 Oakley Drive, Avondale Heights. About a year later, your daughter, Sarah, was born. In 1997, you moved into the house you built with Karen at Avondale Heights. Your son, Anthony, moved into your marital home at age 15 and lived at the home for approximately five years.
- 45 Your denim clothing company went into liquidation in 2000. Again you started a small business, this time with your wife. This was a clothing wholesale business located at Highpoint. In 2009, you opened clothing retail stores, trading as Bella Bleu. Your wife managed the Bella Bleu business. Bella Bleu initially traded out of a store at Highpoint, but over time this store was moved to Moonee Ponds, and later this store was closed and moved to Watergardens. In 2013, the company you set up in connection with the clothing wholesale business went into liquidation. In 2015, you opened a second Bella Bleu store in Broadmeadows, which closed in February 2016. From June 2015 onwards, you did casual work as an Uber driver.
- 46 Whilst the small businesses you have set up over the years may not have prospered, you have clearly led an industrious life, which is commendable.

Summary of character references

- 47 Five character references, the contents of which were not challenged by the prosecution, were tendered on your behalf. The authors of those references are Sarah Ristevski and a friend of hers; your niece (who is also your god daughter) and her husband; and another of your god daughters.
- 48 The most striking reference is of course Sarah's. Sarah describes you as "loving, caring, sympathetic, protective and charismatic." She explains that she was "extremely lucky to have two loving parents who did everything they could for each other", adding that "the love they had for each other and the marriage that they shared is something I hope to one day experience for myself." She also says "I can confidently say that in my 23 years I have never witnessed any form of violence between my mum and dad."

- 49 Sarah is not alone in the depiction of you as a loving father and husband. The other references suggest much the same. They also depict you as a loving uncle and god father.
- 50 Collectively, the references show you to have been a person of good character, well-liked and involved in your local community, including as a player and coach in both football and cricket.
- 51 The fact that you are 55 years of age and have no criminal antecedents supplements and reinforces what your character referees have said about you. In summary, I accept that, apart from the commission of your crime and your post offence conduct, you have been a person of good character.

Summary of mitigating circumstances

- 52 As well as your previous good character, your counsel relied on your plea of guilty and your prospects of rehabilitation in mitigation of your sentence.²²
- 53 In relation to your plea of guilty, your counsel, as previously mentioned, did not submit it indicated remorse. Your counsel's circumspection was sensible, given your secrecy regarding how and why you killed your wife which has compounded the grief of Karen's loved ones. But, as the law recognises, your plea of guilty is still deserving of a significant discount for its utilitarian benefits. It has spared family and friends the ordeal of a trial. Witnesses have also been spared the stress of testifying, and the community has been saved the considerable expense of a trial which was anticipated to run for about five weeks. Whilst the prosecution at first balked at the notion that your plea of guilty should attract a significant discount, it eventually accepted that your entry of a plea of guilty was "no small thing."²³ But, of course, you cannot expect the kind of sentencing discount you would have received had you made full and frank disclosure, enabling me to find that you were truly remorseful and doing all that you could to ease the pain of Karen's loved ones.

²² Transcript of Proceedings, *DPP v Ristevski* (S CR 2018 0213, Beale J, Wednesday 27 March 2019), 79.

²³ *Ibid*, 80.

54 As for your prospects of rehabilitation, I find, on the balance of probabilities, that they are good, given your lack of criminal antecedents and the unchallenged character references.

Comparable cases

55 Since I am obliged to have regard to current sentencing practices in sentencing you, I have reviewed a significant number of manslaughter cases.²⁴ They were of some assistance but I do not intend here to trawl through the facts and sentences of the cases I have considered. However, I will say this. Many of the domestic violence homicides that I have looked at involve a history of domestic violence, not an isolated outburst of violence. In that regard, your case is atypical.

General sentencing principles

56 As was conceded by your counsel the principles of general deterrence, denunciation and just punishment must loom large in sentencing you.²⁵ Because I find that your prospects of rehabilitation are good, I do not place much weight on specific deterrence or the need to protect the community from you, though specific deterrence has some part to play given the seriousness of your offence, your post offence conduct and your continuing secrecy.

Sentence

57 You were originally charged with murder. Ultimately that charge was downgraded by the prosecution to manslaughter. Accordingly, in sentencing you, I must do so on the basis that, when you killed your wife, you did not do so with murderous intent (that is, with an intention to kill or cause really serious injury).

58 Borce Ristevski, please stand.

59 For the offence of manslaughter, I sentence you to nine years' imprisonment.

²⁴ *R v Chang* [2003] VSC 499; *R v Mochenigo* [2013] VSCA 231; *R v Lee* [2018] VSCA 343; *R v Ramage* [2004] VSC 508; *R v Turner* (2017) VSC 358; *R v Walker & Maybus* [2016] VSC 116; *R v Veerman* (2015) VSC 193.

²⁵ Transcript of Proceedings, *DPP v Ristevski* (S CR 2018 0213, Beale J, Wednesday 27 March 2019), 78.

60 I declare a non-parole period of six years.

61 I declare that you have already served 491 days by way of pre-sentence detention.

62 Pursuant to s 6AAA of the *Sentencing Act 1991*, I declare that, but for your plea of guilty, I would have imposed a sentence of 10 years' imprisonment with a non-parole period of seven years.

Ancillary Orders

63 In relation to the forensic sample order sought by the prosecution (namely, a saliva sample), I am satisfied that it is appropriate to make such an order given the seriousness of your offence and your consent to the order. Accordingly, I order you to undergo the forensic procedure and inform you that, if you do not cooperate in the provision of the saliva sample, a police officer may use reasonable force to enable a blood sample to be taken. A copy of the order will be provided to you.

CERTIFICATE

I certify that this and the 14 preceding pages are a true copy of the reasons for sentence of Justice Beale of the Supreme Court of Victoria delivered on 18 April 2019.

DATED this eighteenth day of April 2019.


Associate